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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSLYVANIA

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First United Methodist Church at Media a/k/a : Civ.

First Church Media

Plaintiff, :

v. :

Media Food Bank & :

Paul Mickle

Defendants. :

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PAUL MICKLE & MEDIA FOOD BANKS NOTICE OF REMOVAL

PLEASE TAKE NOTICE THAT:

Pursuant to 28 U.S.C. § 1441(c)(1)(a), 28 U.S.C. § 1454, 28 U.S.C. § 1338, Paul Mickle & Media Food Bank (“Defendant”) hereby removes this action from the Court of Common Pleas of Delaware County, Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania. In support of this Notice of Removal, Defendant avers as follows:

Procedural History and Plaintiff's Allegations

1. On February 8, 2024, First United Methodist Church of Media (“Plaintiff”) emailed Defendant a Cease and Desist letter, giving Defendant four days to comply with the terms, namely halting the use of the name “Media Food Bank” or face a lawsuit. A true and correct copy of the Cease and Desist is attached as Exhibit 1.

2. On February 23, 2024, Plaintiff commenced a civil action against Defendant when they filed a Complaint against Defendant with Four (4) Causes of Action. A true and correct copy of the Complaint is attached as Exhibit 2.
3. Plaintiff's Complaint alleged: Count I, Unfair Competition; Count II, Tortious Interference with Contractual Relations; Count III Aiding and Abetting Breach of Fiduciary Duty; and Count IV Civil Conspiracy.
4. On February 29, 2024, Plaintiff filed an Emergency Petition for Preliminary Injunction, alleging irreparable harm and loss if Defendant did not turn over a Facebook Account, and for Defendant to "stop impersonating [Plaintiff] to donors and volunteers." A true and correct copy of the Emergency Injunction is attached as Exhibit 3.
5. On March 4, 2024, a Notice of Hearing was sent to Defendant by the Hon. John J. Whelan, wherein Judge Whelan granted the request for an Emergency Hearing and set a hearing date for March 15, 2024 in Courtroom 8, Delaware County Courthouse, 201 W. Front Street Media Pa. A true and correct copy of the Notice of Hearing is attached as Exhibit 4.
6. On March 7, 2024, Undersigned Counsel entered his appearance in the above captioned matter.
7. On March 14, 2024, Plaintiff filed a return of Sheriff Service, indicating that the Complaint was delivered to an adult at the residence of Paul Mickle on March 5, 2024.
8. On March 14, 2024, Defendant filed Preliminary Objections to the Petition for Emergency Injunction, which were not docketed until March 15, 2024.

9. On March 15, 2024, Plaintiff, represented by Darryl Shorter, Esq., Defendant represented by undersigned counsel, and the Attorney General of Pennsylvania, represented by Lisa Rhodes, Esq. were present in Courtroom 8 at 10:30 am for the hearing.
10. At the outset of the Hearing Judge Whelan allowed Oral Argument on the Preliminary Objection, at the conclusion of which Judge Whelan overruled the Objections allowing the matter to proceed to a hearing.
11. After the Hearing in which Plaintiff and Defendant called witnesses and introduced evidence, Judge Whelan issued his ruling and findings from the Bench, finding that Plaintiff had carried their burden for the issuance of a Preliminary Injunction, and found for Plaintiff.
12. Judge Whelan instructed Counsel to jointly draft an Order in alignment with his findings that would be jointly submitted to chambers.
13. On March 20, 2024, Counsel individually submitted to Chambers their draft Orders.
14. On March 20, 2024, Judge Whelan issued a Preliminary Injunction, enjoining Defendant from using the name Media Food Bank, Ordering Defendant to delete the Facebook page “Media Food Bank” to turn over to Plaintiff’s counsel the administrative login information, etc. A true and correct copy of Judge Whelan’s Order is attached as Exhibit 5.
15. On March 21, 2024 Defendant filed a Petition for Reconsideration, requesting that Judge Whelan reconsider the issuance of a preliminary injunction. A true and correct copy of the Petition for Reconsideration is attached as Exhibit 6.
16. On April 8, 2024, Plaintiff, *sua sponte* filed an Amended Complaint.

This Court has Jurisdiction Pursuant to 28 U.S.C §§ 1441, 1331, 1454, and 1338

1. Section 1441(c) of Title 28, United States Code, states that a Defendant may remove from State Court any civil action where the District Courts have Original Jurisdiction to the District Court embracing the place where such action is pending. 28 U.S.C. § 1441(a)
2. Section 1331 of Title 28, United States Code, states that the District Courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331.
3. Section 1337(a) of Title 28, United States Code, states that a District Court that has Original Jurisdiction shall have supplemental jurisdiction over all other claims that are so related to claims that they form the same case or controversy under Article III of the United States Constitution.
4. Count I, II, III, and IV, of Plaintiff's Complaint are textbook Trademark infringement claims generally governed under 15 U.S.C. §1121.
5. This Court has original jurisdiction over Plaintiff's unfair competition claim that raises substantial trademark questions regarding ownership and usage of "Media Food bank" under the Lanham Act, 15 U.S.C. §§ 1051 et seq.
6. This Court has original jurisdiction over any unfair competition claim as it related to the use of trademarks and any confusion in the marketplace of trademarks as plead by Plaintiff.

7. This Court has supplemental jurisdiction over any miscellaneous state law claims because they all stem from the alleged trademark infringement and are so related that they form part of one controversy: who owns' "Media Food Bank."
8. Alternatively, Plaintiffs raise novel questions of federal law and ownership of a Facebook Account such that Federal Question jurisdiction is warranted.¹
9. Venue is proper the Eastern District of Pennsylvania, as this Court is the Jurisdiction that embraces the Court of Common Pleas of Delaware County, Pennsylvania, wherein the underlying matter is currently lodged.
10. This Notice of Removal has been filed within 30 days after the receipt by Defendants, through service or otherwise, of a copy of the Complaint, pursuant to 28 U.S.C. § 1446(b).
11. Defendants consent jointly to this Removal from State Court to Federal Court.
12. Defendant received a copy of the Complaint on March 9, 2024, and the instant filing of the Notice of Removal is on or before April 9, 2024.
13. Pursuant to 42 U.S.C. § 1446(d), Defendants are, on this date, filing a Notice of Removal notice that will be served upon Plaintiffs and the Prothonotary of the Delaware County Court of Common Pleas. A copy of the Notice is attached hereto as Exhibit 6.
14. Defendants specifically reserve and, by the filing of this Notice of Removal, do not waive applicable defenses to Plaintiffs' Complaint. The filing of this Notice does not represent acknowledgment of the validity of any claims made by Plaintiffs.

¹ JLM Couture, Inc. v. Gutman, 91 F.4th 91, 102 (2d Cir. 2024), wherein our sister circuit identifies that "determining ownership of social-media accounts is indeed a relatively novel exercise."

15. True and correct copies of all process, pleadings, and orders served on the defendants in the action pending in state court art attached hereto.

WHEREFORE, Defendants, Paul Mickle, and Media Food Bank respectfully request that the action presently pending in The Court of Common Pleas of Delaware County be removed to the United States Court for the Eastern District of Pennsylvania.

Dated: April 9, 2024

Respectfully submitted,

By: /s/ Andre Desir

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EXHIBIT

